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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1052

J. FRANK HOGUE,

Petitioner,

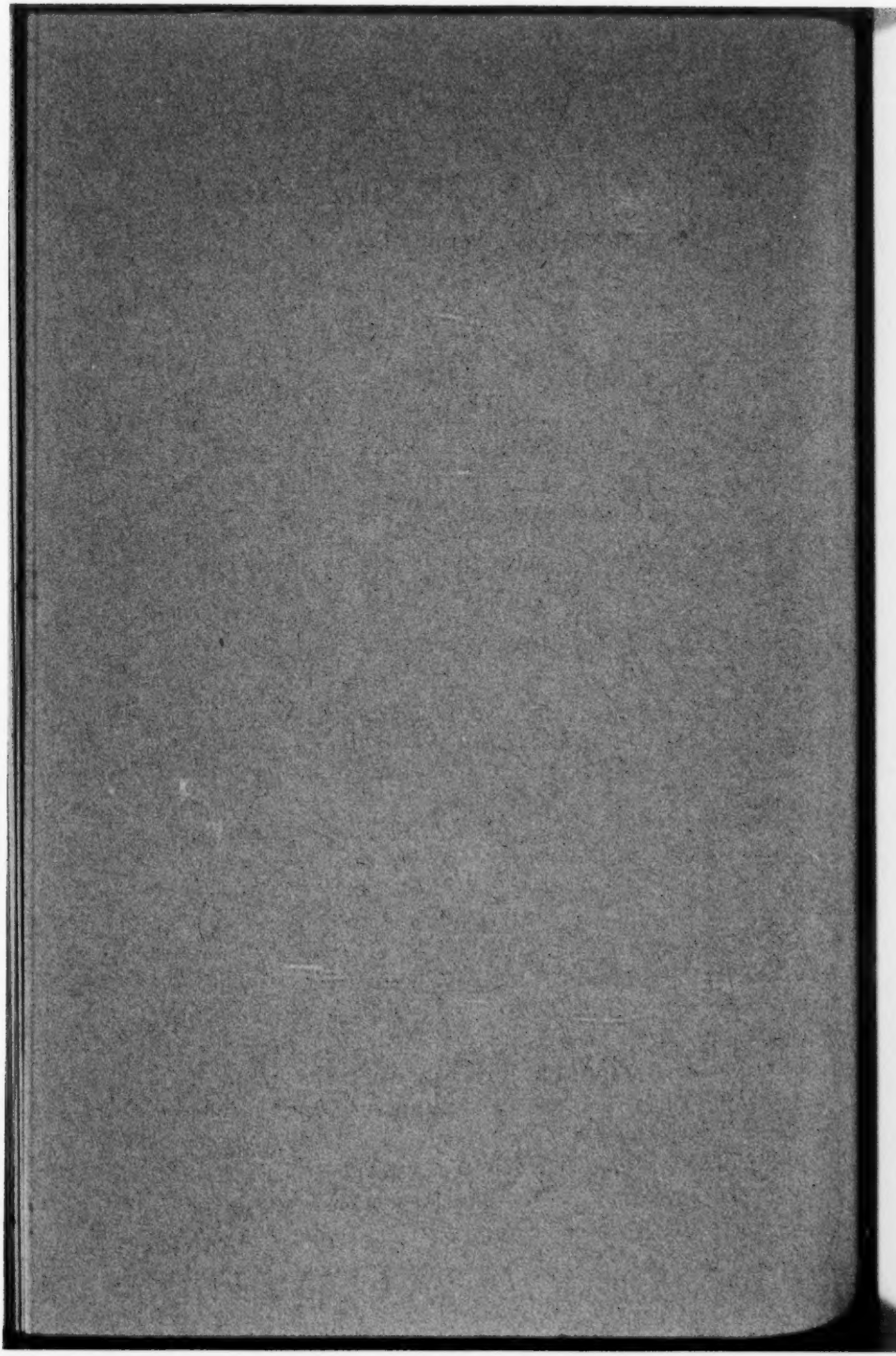
vs.

CLINTON T. DUFFY, WARDEN, SAN QUENTIN PENITENTIARY.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITIONER'S REPLY BRIEF.

J. FRANK HOGUE,
Pro se.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1052

J. FRANK HOGUE,

Petitioner,

vs.

CLINTON T. DUFFY, WARDEN, SAN QUENTIN PENITENTIARY,

Respondent.

REPLY TO BRIEF FOR RESPONDENT.

"I do solemnly swear (or affirm * * *) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of Attorney General of California according to the best of my ability." Oath of office, Art. XX, Sec. 3, California Constitution. This is the oath of office subscribed to by the Attorney General of California.

The German Nazi and the Japanese Militarist would like to deny the world the right to be heard in Court on pleas of illegal imprisonment.

The petitioner contends that the Attorney General neither during the time that the petitioner's case was before

the State Courts nor afterward inquired into his case of illegal imprisonment, though he filed his protest of such illegal imprisonment, and in each court of the State in succession he was denied his constitutional rights that are set forth in the Bill of Rights, namely the right to be heard in Court, that which the said Attorney General has by oath subscribed to support, to protect, to execute and effectuate, and in spite of the fact that the Attorney General was informed of the effort against the said illegal imprisonment.

The petitioner committed no crime nor violated the law when he directed his case through the Federal District Court and through the Federal Circuit Court of Appeals. It may be a privilege to appeal directly from the State Supreme Court to the United States Supreme Court under such claims, but the petitioner chose the service of the lower Federal Courts there being Constitutional questions involved. He also paid his way and the said Federal Courts accepted the Fees and rendered a decision and that decision is that his relief lay in the United States Supreme Court. The Honorable Attorney General did not raise the question of directing the appeal to the United States Supreme Court direct from the State Supreme Court, but in the Federal Circuit Court of Appeals he did say "leave appellant to his remedy in the United States Supreme Court".

Who is this petitioner but one not skilled in the law,—one who is not financially able to employ a Clarence Darrow, nor any other attorney, but of a class of many referred to in the decision read by Mr. Justice Black in reference to certain Negroes in the State of Florida delivered February 12th, 1940, the class referred to in the following paragraph, and who said:

> "Under our constitutional system courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak,

outnumbered, or because they are nonconforming victims of prejudice and public excitement."

The Honorable Attorney General is sworn to uphold the Constitution and the Constitution reads directly that the writ of habeas corpus shall not be suspended, that is—abrogated, voided nor nullified, and that the writ of habeas corpus may be applied to any case of claimed illegal imprisonment, that any person claiming illegal imprisonment shall be heard in court by its power of service. To date your petitioner has not been heard in open court by the process of habeas corpus for which he has filed application. Your petitioner does claim with reasons set forth illegal imprisonment, he does claim with law and case citation that he is now suffering illegal imprisonment.

In view of the oath subscribed to by the Honorable Earl Warren on assuming the high office of Attorney General, it occurs to your petitioner that when once appraised of the fact of a claim of illegal imprisonment, that it becomes his SWORN DUTY to look into the allegations and ascertain such facts and urge a hearing of such claims in Court for final disposition, but and instead the said Honorable Attorney General has assumed the attitude of a PROSECUTOR and has successfully prevailed in the Courts in their denying your petitioner his constitutional right to writ of habeas corpus and a hearing of his case in open Court United States Constitutional wise.

Of what use is the Constitution if its provisions are null and void, if it is now meaningless, if it is not respected by "Honorable Men" of the State Courts and States Attorneys? If the said "Honorable Men" willfully and maliciously work adverse to its written provisions in denying hearings in their Courts. What is the difference between these, the said "Honorable Men" and the so-called "Honorable Men" of Japan? What are the American armed forces fighting to protect? Has justice "clean gone" from

the earth? Have the said "Honorable Men" gone mad and refused to look into the claims of one imprisoned when their own laws provide for a hearing? The said law is quoted as follows:

Section 1473 Penal Code of California,

> "Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire the cause of each imprisonment."

Now comes the Honorable Attorney General of California and argues against such complaint and writ of habeas corpus being heard.

The Honorable Attorney General raises the question in opposition to your petitioner being heard in court on the point that he, the petitioner, did not proceed direct to the United States Supreme Court from the California State Supreme Court. It is conceded by the petitioner that the said Honorable Attorney General had nothing else to talk about, for he made no denial of illegal imprisonment, neither has he made any effort to support the constitution in aiding the unfortunate to obtain justice according to the Constitutions thereby protecting the interest of the citizens of the State also.

Why is it so damaging to err in such a minor detail not of absolute necessity, such as carrying suit through two courts extra, and then, why of so little importance if important at all in the mind and contention of the Attorney General, whether a plea of illegal imprisonment is so much as heard in Court when the law in the latter instant is specific and definite and in the first instance is not mandatory but the second the law is mandatory and positive, your petitioner contends, which the more important to preserve the Democracy of the United States, the absolute procedure to the letter when the letter is somewhat elastic, or the ab-

solute written and unmistakable law in regard to the individual rights, the right to be heard in open Court?

That there is now no hope for a fair and impartial hearing of this case in the Courts of California.

Will the Honorable Attorney General Warren in the face of his oath of office deny the petitioner, or any other person imprisoned, the constitutional right to free access to the courts and hearing therein, which is the very thing the petitioner's forefathers fought and suffered to obtain, and is it now stolen, and denied the imprisoned so claiming illegal imprisonment by the so-called "Honorable Men"?

Your petitioner the common of the common people comes and prays that the Brief for Respondent and the argument therein be disregarded and that your petitioner's plea be heard and that he be released from this illegal imprisonment.

April 17, 1942.

Respectfully,

J. Frank Hogue,
Petitioner in propria persona.